

2003 DRAFTING REQUEST

Bill

Received: **09/15/2003**

Received By: **agary**

Wanted: **Soon**

Identical to LRB:

For: **Johnnie Morris (608) 266-3756**

By/Representing: **neci**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - int. rates/loans**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Morris@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Predatory lending

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|------------------------|-----------------------|------------------------|----------------|------------------------|-----------------|-----------------|
| /? | rmarchan 09/16/2003 | kgilfoy 09/29/2003 | | _____ | | | |
| /P1 | | | jfrantze 10/01/2003 | _____ | lnorthro 10/01/2003 | | State |
| /1 | agary | kgilfoy | jfrantze | _____ | lemery | sbasford | |

03/10/2004 12:55:27 PM
Page 2

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| | 03/04/2004 | 03/05/2004 | 03/08/2004 | _____ | 03/08/2004 | 03/10/2004 | |
| | | | | _____ | | sbasford | |
| | | | | _____ | | 03/10/2004 | |

FE Sent For:

AA
intro.

<END>

2003 DRAFTING REQUEST

Bill

Received: **09/15/2003**

Received By: **agary**

Wanted: **Soon**

Identical to LRB:

For: **Johnnie Morris (608) 266-3756**

By/Representing: **neci**

This file may be shown to any legislator: **NO**

Drafter: **agary**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - int. rates/loans**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Morris@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Predatory lending

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|------------------------|-----------------------|------------------------|----------------|------------------------|-----------------|-----------------|
| /? | rmarchan 09/16/2003 | kgilfoy 09/29/2003 | | _____ | | | |
| /P1 | | | jfrantze 10/01/2003 | _____ | Inorthro 10/01/2003 | | State |
| /1 | agary | kgilfoy | jfrantze | _____ | lemery | | |

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------|-----------------|------------------|----------------|------------------|-----------------|-----------------|
| | 03/04/2004 | 03/05/2004 | 03/08/2004 _____ | | 03/08/2004 | | |

FE Sent For:

<END>

10/01/2003 09:57:16 AM

Page 1

2003 DRAFTING REQUEST**Bill**Received: **09/15/2003**Received By: **rmarchan**Wanted: **Soon**

Identical to LRB:

For: **Johnnie Morris (608) 266-3756**By/Representing: **neci**This file may be shown to any legislator: **NO**Drafter: **rmarchan**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - int. rates/loans**

Extra Copies:

Submit via email: **YES**Requester's email: **Rep.Morris@legis.state.wi.us**Carbon copy (CC:) to: **robert.marchant@legis.state.wi.us****Pre Topic:**

No specific pre topic given

Topic:

Predatory lending

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|------------------------|-----------------------|------------------------|----------------|------------------------|-----------------|-----------------|
| /? | rmarchan 09/16/2003 | kgilfoy 09/29/2003 | | | | | |
| /P1 | | 11 - 3/5 Kmg | jfrantze 10/01/2003 | | lnorthro 10/01/2003 | | |

Handwritten signatures and dates are present below the table, including "11 - 3/5", "Kmg", "jfrantze 10/01/2003", and "lnorthro 10/01/2003".

10/01/2003 09:57:16 AM

Page 2

FE Sent For:

<END>

2003 DRAFTING REQUEST

Bill

Received: **09/15/2003**

Received By: **rmarchan**

Wanted: **Soon**

Identical to LRB:

For: **Johnnie Morris (608) 266-3756**

By/Representing: **neci**

This file may be shown to any legislator: **NO**

Drafter: **rmarchan**

May Contact:

Addl. Drafters:

Subject: **Fin. Inst. - int. rates/loans**

Extra Copies:

Submit via email: **YES**

Requester's email: **Rep.Morris@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Predatory lending

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------|-----------------|--------------|----------------|------------------|-----------------|-----------------|
| 1/? | rmarchan | 1/1-9/29 Kmg | 9/30 | 7/13 10/1 | | | |

FE Sent For:

<END>

Marchant, Robert

From: Riley, Neci
Sent: Friday, September 12, 2003 10:39 AM
To: Marchant, Robert
Subject: Draft Request

Mr. Marchant:

Rep. Morris would like to have legislation drafted relating to predatory lending. Please see the attached bill from North Carolina for guidance.

If this is not your area, please pass it on to the appropriate drafter.

Thanks,

Neci

Neci Riley
Office of State Rep. Johnnie E. Morris
118 North State Capitol
P.O. Box 8953
Madison, WI 53708

Phone: (608) 266-3756
Fax: (608) 282-3611



North Carolina
General Assembl...

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999SESSION LAW 1999-332
SENATE BILL 1149

AN ACT TO MODIFY PERMISSIBLE FEES WHICH MAY BE CHARGED IN CONNECTION WITH HOME LOANS SECURED BY FIRST MORTGAGE OR FIRST DEED OF TRUST, TO IMPOSE RESTRICTIONS AND LIMITATIONS ON HIGH-COST HOME LOANS, TO REVISE THE PERMISSIBLE FEES AND CHARGES ON CERTAIN LOANS, TO PROHIBIT UNFAIR OR DECEPTIVE PRACTICES BY MORTGAGE BROKERS AND LENDERS, AND TO PROVIDE FOR PUBLIC EDUCATION AND COUNSELING ABOUT PREDATORY LENDERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 24-1.1A reads as rewritten:

"S 24-1.1A. Contract rates on home loans secured by first mortgages or first deeds of trust.

(a) Notwithstanding any other provision of this ~~Chapter,~~ Chapter, but subject to the provisions of G.S. 24-1.1E, parties to a home loan may contract in writing as follows:

(1) Where the principal amount is ten thousand dollars (\$10,000) or more the parties may contract for the payment of interest as agreed upon by the parties;

(2) Where the principal amount is less than ten thousand dollars (\$10,000) the parties may contract for the payment of interest as agreed upon by the parties, if the lender is either (i) approved as a mortgagee by the Secretary of Housing and Urban Development, the Federal Housing Administration, the ~~Veterans Administration,~~ Department of Veterans Affairs, a national mortgage association or any federal agency; or (ii) a local or foreign bank, savings and loan association or service corporation wholly owned by one or more savings and loan associations and permitted by law to make home loans, credit union or insurance company; or (iii) a State or federal agency;

(3) Where the principal amount is less than ten thousand dollars (\$10,000) and the lender is not a lender described in the preceding subdivision (2) the parties may contract for the payment of interest not in excess of sixteen percent (16%) per annum.

(4) Notwithstanding any other provision of law, where the lender is an affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act, the lender may charge interest to be computed only on the following basis: monthly on the outstanding principal balance at a rate not to exceed the rate provided in this subdivision.

On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by this subdivision. Such rate shall be the latest published noncompetitive rate for U.S.

Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or fifteen percent (15%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the rate announced by the Commissioner in the preceding calendar month.

An affiliate operating in the same office or subsidiary operating in the same office of a licensee under the North Carolina Consumer Finance Act may not make a home loan for a term in excess of six (6) months which provides for a balloon payment. For purposes of this subdivision, a balloon payment means any scheduled payment that is more than twice as large as the average of earlier scheduled payments. This subsection does not apply to equity lines of credit as defined in G.S. 45-81.

~~(b) No prepayment fees shall be contracted by the borrower and lender with respect to any home loan where the principal amount borrowed is one hundred thousand dollars (\$100,000) or less; otherwise a lender and a borrower may agree on any terms as to the prepayment of a home loan. Except as provided in subdivision (1) of this subsection, a lender and a borrower may agree on any terms as to the prepayment of a home loan.~~

(1) No prepayment fees or penalties shall be contracted by the borrower and lender with respect to any home loan in which: (i) the principal amount borrowed is one hundred fifty thousand dollars (\$150,000) or less, (ii) the borrower is a natural person, (iii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and (iv) the loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(2) The limitations on prepayment fees and penalties contained in subdivision (b)(1) of this section shall not apply to the extent state law limitations on prepayment fees and penalties are preempted by federal law or regulation.

~~(c) Except as limited by subsection (b) above, a lender may charge to the borrower the fees described in G.S. 24-10. Provided, if the loan is one described in subsection (a)(1) or subsection (a)(2) above, the parties may agree to the payment of discount points, commitment fees, finance charges, or other similar charges agreed upon by the parties notwithstanding the provisions of any state law limiting the amount of discount points, commitment fees, finance charges or other similar charges~~

~~which may be charged, taken, received or reserved with respect to a home loan. Provided further, that no lender on loans under G.S. 24-1.1A(a)(3) may charge or receive any fees or discount points other than the interest permitted in G.S. 24-1.1A(a)(3).~~

If the home loan is one described in subdivision (a)(1) or subdivision (a)(2) of this section, the lender may charge the borrower the following fees and charges in addition to interest and other fees and charges as permitted in this section and late payment charges as permitted in G.S. 24-10.1:

(1) At or before loan closing, the lender may charge such of the following fees and charges as may be agreed upon by the parties notwithstanding the provisions of any State law, other than G.S. 24-1.1E, limiting the amount of such fees or charges:

a. Loan application, origination, and commitment fees;

b. Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a bona fide reduction of the interest rate or time-price differential;

c. Assumption fees to the extent permitted by G.S. 24-10(d);

d. Appraisal fees to the extent permitted by G.S. 24-10(h);

e. To the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges, and fees paid or to be paid to public officials; and

f. Additional fees and charges, however denominated, payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the principal amount of the loan, or (ii) one hundred fifty dollars (\$150.00).

(2) Except as provided in subsection (g) of this section with respect to the deferral of loan payments, upon modification, renewal, extension, or amendment of any of the terms of a home loan, the lender may charge such of the following fees and charges as may be agreed upon by the parties notwithstanding the provisions of any State law, other than G.S. 24-1.1E, limiting the amount of such fees or charges:

a. Discount points, but only to the extent the discount points are paid for the purpose of reducing, and in fact result in a bona fide reduction of, the interest rate or time-price differential;

b. Assumption fees to the extent permitted by G.S. 24-10(d);

c. Appraisal fees to the extent permitted by G.S. 24-10(h);

d. To the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges, and fees paid or to be paid to public officials; and

e. Additional fees and charges, however denominated, payable to the lender which, in the aggregate, do not exceed the greater of (i) one quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or (ii) one hundred fifty dollars (\$150.00). The fees and charges permitted by this sub-subdivision may be charged only pursuant to a written agreement which states the amount of the fee or charge and is made at the time of the specific modification, renewal, extension, or amendment, or at the time the specific modification, renewal, extension, or amendment is requested.

(c1) No lender on home loans under subdivision (a)(3) of this section may charge or receive any interest, fees, charges, or discount points other than: (i) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials; (ii) interest as permitted in subdivision (a)(3) of this section; and (iii) late payment charges to the extent permitted by G.S. 24-10.1.

(c2) No lender on home loans under subdivision (a)(4) of this section may charge or receive any interest, fees, charges, or discount points other than: (i) the fees described in G.S. 24-10; (ii) to the extent permitted by G.S. 24-8(d), sums for the payment of bona fide loan-related goods, products, and services provided or to be provided by third parties and sums for the payment of taxes, filing fees, recording fees, and other charges and fees, paid or to be paid to public officials; (iii) interest as permitted in subdivision (a)(4) of this section; and (iv) late payment charges to the extent permitted by G.S. 24-10.1.

(d) The loan or investments regulated by G.S. 53-45 shall not be subject to the provisions of this section.

(e) The term "home loan" shall mean a loan, other than an open-end credit plan, where the principal amount is less than three hundred thousand dollars (\$300,000) secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located one or more single-family dwellings or dwelling units.

(f) Any home loan obligation existing before June 13, 1977, shall be construed with regard to the law existing at the time the home loan or commitment to lend was made and this act shall only apply to home loans or loan commitments made from and after June 13, 1977; provided, however, that variable rate home loan obligations executed prior to April 3, 1974, which by their terms provide that the interest rate shall be decreased and may be increased in accordance with a stated cost of money formula or other index shall be enforceable according to the terms and tenor of said written obligations.

(g) The parties to a home loan governed by G.S. 24-1.1A(a) (1) or (2) subdivision (a)(1) or (2) of this section may contract in writing to defer payments of interest the payment of all or part of one or more unpaid installments and for payment of interest on deferred interest as agreed upon by the parties. The parties may agree in writing that said deferred interest may be added to the principal balance of the loan. This subsection

shall not be construed to limit payment of interest upon interest in connection with other types of loans. Except as restricted by G.S. 24-1.1E, the lender may charge deferral fees as may be agreed upon by the parties to defer the payment of one or more unpaid installments. If the home loan is of a type described in subdivision (1) of this subsection, the deferral fees shall be subject to the limitations set forth in subdivision (2) of this subsection:

(1) A home loan will be subject to the deferral fee limitations set forth in subdivision (2) of this subsection if:

a. The borrower is a natural person;

b. The debt is incurred by the borrower primarily for personal, family, or household purposes; and

c. The loan is secured by a first mortgage or first deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(2) Deferral fees for home loans identified in subdivision (1) of this subsection shall be subject to the following limitations:

a. Deferral fees may be charged only pursuant to an agreement which states the amount of the fee and is made at the time of the specific deferral or at the time the specific deferral is requested; provided, that if the agreement relates to an installment which is then past due for 15 days or more, the agreement must be in writing and signed by at least one of the borrowers. For purposes of this subdivision an agreement will be considered a signed writing if the lender receives from at least one of the borrowers a facsimile or computer-generated message confirming or otherwise accepting the agreement.

b. Deferral fees may not exceed the greater of five percent (5%) of each installment deferred or fifty dollars (\$50.00), multiplied by the number of complete months in the deferral period. A month shall be measured from the date an installment is due. The deferral period is that period during which no payment is required or made as measured from the date on which the deferred installment would otherwise have been due to the date the next installment is due under the terms of the note or the deferral agreement.

c. If a deferral fee has once been imposed with respect to a particular installment, no deferral fee may be imposed with respect to any future payment which would have been timely and sufficient but for the previous deferral.

d. If a deferral fee is charged pursuant to a deferral agreement, a late charge may be imposed with respect to the deferred payment only if the amount deferred is not paid when due under the terms of the deferral agreement and no new deferral agreement is entered into with respect to that

installment.

e. No lender may charge a deferral fee for modifying or extending the maturity date of a loan or the date a balloon payment is due; provided, however, that any such modification or extension of the loan maturity date or the date a balloon payment is due shall, to the extent applicable, be considered a modification or extension subject to the provisions of subdivision (c) (2) of this section.

(h) The parties to a home loan governed by ~~C.S. 24-1.1A(a) (1) or (2)~~ subdivision (a) (1) or (2) of this section may agree in writing to a mortgage or deed of trust which provides that periodic payments may be graduated during parts of or over the entire term of the loan. The parties to such a loan may also agree in writing to a mortgage or deed of trust which provides that periodic disbursements of part of the loan proceeds may be made by the lender over a period of time agreed upon by the parties, or over a period of time agreed upon by the parties ending with the death of the borrower(s). Such mortgages or deeds of trust may include provisions for adding deferred interest to principal or otherwise providing for charging of interest on deferred interest as agreed upon by the parties. This subsection shall not be construed to limit other types of mortgages or deeds of trust or methods or plans of disbursement or repayment of loans that may be agreed upon by the parties.

(i) Nothing in this section shall be construed to authorize or prohibit a lender, a borrower, or any other party to pay compensation to a mortgage broker or a mortgage banker for services provided by the mortgage broker or the mortgage banker in connection with a home loan."

Section 2. Chapter 24 of the General Statutes is amended by adding a new section to read:

"§ 24-1.1E. Restrictions and limitations on high-cost home loans.

(a) Definitions. -- The following definitions apply for the purposes of this section:

(1) 'Affiliate' means any company that controls, is controlled by, or is under common control with another company, as set forth in the Bank Holding Company Act of 1956 (12 U.S.C. § 1841 et seq.), as amended from time to time.

(2) 'Annual percentage rate' means the annual percentage rate for the loan calculated according to the provisions of the federal Truth-in-Lending Act (15 U.S.C. § 1601, et seq.), and the regulations promulgated thereunder by the Federal Reserve Board (as said Act and regulations are amended from time to time).

(3) 'Bona fide loan discount points' means loan discount points knowingly paid by the borrower for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the loan, provided the amount of the interest rate reduction purchased by the discount points is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

(4) A 'high-cost home loan' means a loan other than an open-end credit plan or a reverse mortgage transaction in which:

a. The principal amount of the loan

does not exceed the lesser of (i) the conforming loan size limit for a single-family dwelling as established from time to time by the Federal National Mortgage Association, or (ii) three hundred thousand dollars (\$300,000);

b. The borrower is a natural person;

c. The debt is incurred by the borrower primarily for personal, family, or household purposes;

d. The loan is secured by either (i) a security interest in a manufactured home (as defined in G.S. 143-147(7)) which is or will be occupied by the borrower as the borrower's principal dwelling, or (ii) a mortgage or deed of trust on real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling; and

e. The terms of the loan exceed one or more of the thresholds as defined in subdivision (6) of this section.

(5) 'Points and fees' means:

a. All items required to be disclosed under sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal Regulations, as amended from time to time, except interest or the time-price differential;

b. All charges for items listed under section 226.4(c)(7) of Title 12 of the Code of Federal Regulations, as amended from time to time, but only if the lender receives direct or indirect compensation in connection with the charge or the charge is paid to an affiliate of the lender; otherwise, the charges are not included within the meaning of the phrase 'points and fees';

c. All compensation paid directly by the borrower to a mortgage broker not otherwise included in sub-subdivision a. or b. of this subdivision;

d. The maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents; and

e. 'Points and fees' shall not include (i) taxes, filing fees, recording and other charges and fees paid or to be paid to public officials for determining the existence of or for perfecting, releasing, or satisfying a security interest; and (ii) fees paid to a person other than a lender or an affiliate of the lender or to the mortgage broker or an affiliate of the mortgage broker for the following: fees for tax payment services; fees for flood certification; fees for pest infestation and flood determinations; appraisal fees; fees for inspections performed prior to closing; credit reports; surveys; attorneys' fees (if the borrower has the right to select the attorney from an approved list or otherwise); notary fees; escrow charges, so long as not otherwise included under sub-subdivision a. of this

subdivision; title insurance premiums; and fire insurance and flood insurance premiums, provided that the conditions in section 226.4(d)(2) of Title 12 of the Code of Federal Regulations are met.

(6) 'Thresholds' means:

a. Without regard to whether the loan transaction is or may be a 'residential mortgage transaction' (as the term 'residential mortgage transaction' is defined in section 226.2(a)(24) of Title 12 of the Code of Federal Regulations, as amended from time to time), the annual percentage rate of the loan at the time the loan is consummated is such that the loan is considered a 'mortgage' under section 152 of the Home Ownership and Equity Protection Act of 1994 (Pub. Law 103-25, [15 U.S.C. § 1602(aa)]), as the same may be amended from time to time, and regulations adopted pursuant thereto by the Federal Reserve Board, including section 226.32 of Title 12 of the Code of Federal Regulations, as the same may be amended from time to time;

b. The total points and fees payable by the borrower at or before the loan closing exceed (i) five percent (5%) of the total loan amount if the total loan amount is twenty thousand dollars (\$20,000) or more, or (ii) the lesser of eight percent (8%) of the total loan amount or one thousand dollars (\$1,000), if the total loan amount is less than twenty thousand dollars (\$20,000); provided, the following discount points and prepayment fees and penalties shall be excluded from the calculation of the total points and fees payable by the borrower:

1. Up to and including two bona fide loan discount points payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than one percentage point (1%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;

2. Up to and including one bona fide loan discount point payable by the borrower in connection with the loan transaction, but only if the interest rate from which the loan's interest rate will be discounted does not exceed by more than two percentage points (2%) the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater;

3. Prepayment fees and penalties which may be charged or collected under the terms of the loan documents which do not exceed one percent (1%) of the amount prepaid, provided the loan documents do not permit the lender to charge or collect any prepayment fees or penalties more than 30 months after the loan

closing; or

c. The loan documents permit the lender to charge or collect prepayment fees or penalties more than 30 months after the loan closing or which exceed, in the aggregate, more than two percent (2%) of the amount prepaid.

(7) 'Total loan amount' means the same as the term 'total loan amount' as used in section 226.32 of Title 12 of the Code of Federal Regulations, and the same shall be calculated in accordance with the Federal Reserve Board's Official Staff Commentary thereto.

(b) Limitations. -- A high-cost home loan shall be subject to the following limitations:

(1) No call provision. -- No high-cost home loan may contain a provision which permits the lender, in its sole discretion, to accelerate the indebtedness. This provision does not apply when repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or pursuant to some other provision of the loan documents unrelated to the payment schedule.

(2) No balloon payment. -- No high-cost home loan may contain a scheduled payment that is more than twice as large as the average of earlier scheduled payments. This provision does not apply when the payment schedule is adjusted to the seasonal or irregular income of the borrower.

(3) No negative amortization. -- No high-cost home loan may contain a payment schedule with regular periodic payments that cause the principal balance to increase.

(4) No increased interest rate. -- No high-cost home loan may contain a provision which increases the interest rate after default. This provision does not apply to interest rate changes in a variable rate loan otherwise consistent with the provisions of the loan documents, provided the change in the interest rate is not triggered by the event of default or the acceleration of the indebtedness.

(5) No advance payments. -- No high-cost home loan may include terms under which more than two periodic payments required under the loan are consolidated and paid in advance from the loan proceeds provided to the borrower.

(6) No modification or deferral fees. -- A lender may not charge a borrower any fees to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan.

(c) Prohibited Acts and Practices. -- The following acts and practices are prohibited in the making of a high-cost home loan:

(1) No lending without home-ownership counseling. -- A lender may not make a high-cost home loan without first receiving certification from a counselor approved by the North Carolina Housing Finance Agency that the borrower has received counseling on the advisability of the loan transaction and the appropriate loan for the borrower.

(2) No lending without due regard to repayment ability. -- As used in this subsection, the term

'obligor' refers to each borrower, co-borrower, cosigner, or guarantor obligated to repay a loan. A lender may not make a high-cost home loan unless the lender reasonably believes at the time the loan is consummated that one or more of the obligors, when considered individually or collectively, will be able to make the scheduled payments to repay the obligation based upon a consideration of their current and expected income, current obligations, employment status, and other financial resources (other than the borrower's equity in the dwelling which secures repayment of the loan). An obligor shall be presumed to be able to make the scheduled payments to repay the obligation if, at the time the loan is consummated, the obligor's total monthly debts, including amounts owed under the loan, do not exceed fifty percent (50%) of the obligor's monthly gross income as verified by the credit application, the obligor's financial statement, a credit report, financial information provided to the lender by or on behalf of the obligor, or any other reasonable means; provided, no presumption of inability to make the scheduled payments to repay the obligation shall arise solely from the fact that, at the time the loan is consummated, the obligor's total monthly debts (including amounts owed under the loan) exceed fifty percent (50%) of the obligor's monthly gross income.

(3) No financing of fees or charges. --
In making a high-cost home loan, a lender may not directly or indirectly finance:

a. Any prepayment fees or penalties payable by the borrower in a refinancing transaction if the lender or an affiliate of the lender is the noteholder of the note being refinanced;

b. Any points and fees; or

c. Any other charges payable to third parties.

(4) No benefit from refinancing existing high-cost home loan with new high-cost home loan. -- A lender may not charge a borrower points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same lender as noteholder.

(5) Restrictions on home-improvement contracts. -- A lender may not pay a contractor under a home-improvement contract from the proceeds of a high-cost home loan other than (i) by an instrument payable to the borrower or jointly to the borrower and the contractor, or (ii) at the election of the borrower, through a third-party escrow agent in accordance with terms established in a written agreement signed by the borrower, the lender, and the contractor prior to the disbursement.

(d) Unfair and Deceptive Acts or Practices. -- Except as provided in subsection (e) of this section, the making of a high-cost home loan which violates any provisions of subsection (b) or (c) of this section is hereby declared usurious in violation of the provisions of this Chapter and unlawful as an unfair or deceptive act or practice in or affecting commerce in violation of the provisions of G.S. 75-1.1. The provisions of this section shall apply to any person who in bad faith attempts to avoid the application of this section by (i) the structuring of a loan transaction as an open-end credit plan for the purpose and with the intent of evading the provisions of this section when the

loan would have been a high-cost home loan if the loan had been structured as a closed-end loan, or (ii) dividing any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this section, or (iii) any other such subterfuge. The Attorney General, the Commissioner of Banks, or any party to a high-cost home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this Chapter or Chapter 75, but not both.

(e) Corrections and Unintentional Violations. -- A lender in a high-cost home loan who, when acting in good faith, fails to comply with subsections (b) or (c) of this section, will not be deemed to have violated this section if the lender establishes that either:

(1) Within 30 days of the loan closing and prior to the institution of any action under this section, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the high-cost home loan satisfy the requirements of subsections (b) and (c) of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section; or

(2) The compliance failure was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such errors, and within 60 days after the discovery of the compliance failure and prior to the institution of any action under this section or the receipt of written notice of the compliance failure, the borrower is notified of the compliance failure, appropriate restitution is made, and whatever adjustments are necessary are made to the loan to either, at the choice of the borrower, (i) make the high-cost home loan satisfy the requirements of subsections (b) and (c) of this section, or (ii) change the terms of the loan in a manner beneficial to the borrower so that the loan will no longer be considered a high-cost home loan subject to the provisions of this section. Examples of a bona fide error include clerical, calculation, computer malfunction and programming, and printing errors. An error of legal judgment with respect to a person's obligations under this section is not a bona fide error.

(f) Severability. -- The provisions of this section shall be severable, and if any phrase, clause, sentence, or provision is declared to be invalid or is preempted by federal law or regulation, the validity of the remainder of this section shall not be affected thereby. If any provision of this section is declared to be inapplicable to any specific category, type, or kind of points and fees, the provisions of this section shall nonetheless continue to apply with respect to all other points and fees."

Section 3. Chapter 24 of the General Statutes is amended by adding a new section to read:

"§ 24-2.5. Mortgage bankers and mortgage brokers.

A mortgage broker or a mortgage banker originating a loan in a table-funded loan transaction in which the mortgage broker or mortgage banker is identified as the original payee of the

note shall be considered a lender for purposes of this Chapter."

Section 4. G.S. 24-8 reads as rewritten:

"§ 24-8. Loans not in excess of \$300,000; what interest, fees and charges permitted.

~~No lender shall charge or receive from any borrower or require in connection with a loan any borrower, directly or indirectly, to pay, deliver, transfer or convey or otherwise confer upon or for the benefit of the lender or any other person, firm or corporation any sum of money, thing of value or other consideration other than that which is pledged as security or collateral to secure the repayment of the full principal of the loan, together with fees and interest provided for in this Chapter or Chapter 53 of the North Carolina General Statutes, where the principal amount of a loan is not in excess of three hundred thousand dollars (\$300,000.00); provided, this section shall not prevent a borrower from selling, transferring, or conveying property other than security or collateral to any person, firm or corporation for a fair consideration so long as such transaction is not made a condition or requirement for any loan; provided that this shall not prevent the lender from collecting from the borrower for remittance to others, money in payment of taxes, assessments, cost of upkeep, recording fees, surveys, attorneys' fees, fire, title, life, accident and health, unemployment, and mortgage insurance premiums and other such fees and costs, nor from receiving the proceeds from any insurance policies where a loss occurs under the terms of such policies. This section shall not be applicable to any corporation licensed as a "Small Business Investment Company" under the provisions of the United States Code Annotated, Title 15, section 661, et seq. nor shall it be applicable to the sale or purchase of convertible debentures, nor to the sale or purchase of any debt security with accompanying warrants, nor to the sale or purchase of other securities through an organized securities exchange.~~

(a) If the principal amount of a loan is less than three hundred thousand dollars (\$300,000), no lender shall charge or receive from any borrower or require in connection with any loan any borrower, directly or indirectly, to pay, deliver, transfer, or convey or otherwise confer upon or for the benefit of the lender or any other person, firm, or corporation any sum of money, thing of value, or other consideration other than that which is pledged as security or collateral to secure the repayment of the full principal of the loan, together with fees and interest provided for in this Chapter or Chapter 53 of the General Statutes.

(b) Notwithstanding any contrary provision of State law, if the principal amount of a loan is three hundred thousand dollars (\$300,000) or more, any borrower may agree to pay, and any lender or other person may charge and collect from the borrower, interest, fees, and other charges as may be agreed upon between the parties, and the borrower and anyone claiming by or through the borrower is prohibited from asserting usury as a claim or defense.

(c) The provisions of this section shall not prevent a borrower from selling, transferring, or conveying property other than security or collateral to any person, firm, or corporation for a fair consideration so long as such transaction is not made a condition or requirement for any loan.

(d) Notwithstanding any contrary provision of State law,

any lender may collect money from the borrower for the payment of (i) bona fide loan-related goods, products, and services provided or to be provided by third parties, and (ii) taxes, filing fees, recording fees, and other charges and fees paid or to be paid to public officials. No third party shall charge or receive (i) any unreasonable compensation for loan-related goods, products, and services, or (ii) any compensation for which no loan-related goods and products are provided or for which no or only nominal loan-related services are performed. Loan-related goods, products, and services include fees for tax payment services, fees for flood certification, fees for pest-infestation determinations, mortgage brokers' fees, appraisal fees, inspection fees, environmental assessment fees, fees for credit report services, assessments, costs of upkeep, surveys, attorneys' fees, notary fees, escrow charges, and insurance premiums (including, for example, fire, title, life, accident and health, disability, unemployment, flood, and mortgage insurance).

(e) Notwithstanding any contrary provision of State law, any lender may receive the proceeds from any insurance policies where loss occurs under the terms of such policies.

(f) This section shall not be applicable to any corporation licensed as a 'Small Business Investment Company' under the provisions of the United States Code Annotated, Title 15, section 66, et seq., nor shall it be applicable to the sale or purchase of convertible debentures, nor to the sale or purchase of any debt security with accompanying warrants, nor to the sale or purchase of other securities through an organized securities exchange."

Section 5. Chapter 24 of the General Statutes is amended by adding a new section to read:

"§ 24-10.2. Consumer protections in certain home loans.

(a) For purposes of this section, the term 'consumer home loan' shall mean a loan in which (i) the borrower is a natural person, (ii) the debt is incurred by the borrower primarily for personal, family, or household purposes, and (iii) the loan is secured by a mortgage or deed of trust upon real estate upon which there is located or there is to be located a structure or structures designed principally for occupancy of from one to four families which is or will be occupied by the borrower as the borrower's principal dwelling.

(b) Notwithstanding the provisions of G.S. 58-57-35(b), it shall be unlawful for any lender in a consumer home loan to finance, directly or indirectly, any credit life, disability, or unemployment insurance, or any other life or health insurance premiums; provided, that insurance premiums calculated and paid on a monthly basis shall not be considered financed by the lender.

(c) No lender may knowingly or intentionally engage in the unfair act or practice of 'flipping' a consumer home loan. 'Flipping' a consumer loan is the making of a consumer home loan to a borrower which refinances an existing consumer home loan when the new loan does not have reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and refinanced loans, the cost of the new loan, and the borrower's circumstances. This provision shall apply regardless of whether the interest rate, points, fees, and charges paid or payable by the borrower in connection with the refinancing exceed those thresholds specified in G.S. 24-

1.1E(a)(6).

(d) No lender shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a consumer home loan that refinances all or any portion of such existing loan or debt.

(e) The making of a consumer home loan which violates the provisions of this section is hereby declared usurious in violation of the provisions of this Chapter and unlawful as an unfair or deceptive act or practice in or affecting commerce in violation of the provisions of G.S. 75-1.1. The Attorney General, the Commissioner of Banks, or any party to a consumer home loan may enforce the provisions of this section. Any person seeking damages or penalties under the provisions of this section may recover damages under either this Chapter or Chapter 75, but not both.

(f) In any suit instituted by a borrower who alleges that the defendant violated this section, the presiding judge may, in the judge's discretion, allow reasonable attorneys' fees to the attorney representing the prevailing party, such attorneys' fees to be taxed as a part of the court costs and payable by the losing party, upon a finding by the presiding judge that:

(1) The party charged with the violation has willfully engaged in the act or practice, and there was unwarranted refusal by such party to fully resolve the matter which constitutes the basis of such suit; or

(2) The party instituting the action knew, or should have known, that the action was frivolous and malicious.

(g) This section establishes specific consumer protections in consumer home loans in addition to other consumer protections that may be otherwise available by law."

Section 6. Of the funds appropriated to the Department of Justice for the 1999-2000 fiscal year, the sum of one hundred thousand dollars (\$100,000) may be used to develop and implement a program of consumer counseling or awareness designed to inform the public about the methods by which predatory lenders impose unconscionable and noncompetitive fees and charges as part of complex home mortgage transactions, to protect the public from incurring such fees and charges, and otherwise to encourage the informed and responsible use of credit.

Section 7. The Legislative Research Commission shall study the implementation and enforcement of this act including:

(1) Whether the provisions of this act have a measurable effect on the availability of credit in the State;

(2) Whether the act is successfully reducing the predatory lending practices proscribed by the act; and

(3) Whether there are specific circumstances in which consumers would benefit from permitting a lender to finance credit insurance premiums, which practice is prohibited by G.S. 24-10.2(b).

The Commission shall report their findings and recommendations on the issue of financing credit insurance premiums to the 2000 Regular Session of the 1999 General Assembly. The Commission may report their findings and recommendations to the 2001 General Assembly and shall make a final report to the 2002 Regular Session of the 2001 General Assembly.

Section 8. Section 2 of this act and G.S. 24-10.2(b),

as enacted in Section 5 of this act, become effective July 1, 2000, and apply to loans made or entered into on or after that date. Section 6 of this act becomes effective July 1, 1999. Section 7 of this act is effective when this act becomes law. The remainder of this act becomes effective October 1, 1999, and applies to loans made or entered into, payments deferred, and loans modified, renewed, extended, or amended on or after that date.

In the General Assembly read three times and ratified this the 15th day of July, 1999.

s/ Dennis A. Wicker
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ James B. Hunt, Jr.
Governor

Approved 10:35 a.m. this 22nd day of July, 1999



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3277/P/

RJM:

[Handwritten signatures and initials]
NOTE

[Handwritten signature]
PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

WED AM
Oct 1

[Handwritten: Gen. Cat.]
1 AN ACT ...; relating to: the regulation of certain consumer mortgage loans,
2 granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. Chapter 428 (title) of the statutes is amended to read:

4 *[Handwritten: B]* CHAPTER 428
FIRST LIEN REAL ESTATE AND

5 HIGH-COST HOME LOANS

6 SECTION 2. Subchapter I (title) of chapter 428 [precedes 428.101] of the statutes
7 is created to read:

8 CHAPTER 428

9 SUBCHAPTER I

10 FIRST LIEN REAL ESTATE LOANS

1 **SECTION 3.** 428.101 (intro.) of the statutes is amended to read:

2 **428.101 Applicability.** (intro.) This ~~chapter~~ subchapter applies to:

3 **SECTION 4.** 428.101 (3) of the statutes is amended to read:

4 428.101 (3) Loans made on or after November 1, 1981, by a creditor to a
5 customer and which are secured by a first lien real estate mortgage or equivalent
6 security interest if the amount financed is \$25,000 or less and if the loan is not subject
7 to subch. II.

8 **SECTION 5.** 428.102 (intro.) of the statutes is amended to read:

9 **428.102 Definitions.** (intro.) In this ~~chapter~~ subchapter:

10 **SECTION 6.** 428.102 (2) of the statutes is amended to read:

11 428.102 (2) "Creditor" means a person who regularly engages in, arranges for
12 or procures from 3rd persons, [×]loans within the scope of this ~~chapter~~ subchapter.

13 **SECTION 7.** 428.103 (1) (intro.) of the statutes is amended to read:

14 428.103 (1) (intro.) The following limitations shall apply to all loans subject to
15 this ~~chapter~~ subchapter:

16 **SECTION 8.** 428.106 of the statutes is amended to read:

17 **428.106 Remedies.** (1) Violations of this ~~chapter~~ subchapter may be enforced
18 by a customer subject to this section and ss. 425.308 to 425.311.

19 (2) With respect to a loan subject to this ~~chapter~~ subchapter, if the court as a
20 matter of law finds that any aspect of the transaction, any conduct directed against
21 the customer, by the creditor, or any result of the transaction is unconscionable, the
22 court shall, in addition to the remedies and penalties set forth in this ~~chapter~~
23 subchapter, and a penalty not to exceed that specified in s. 428.103 (2), refuse to
24 enforce the unconscionable aspect of the transaction or so limit the application of any
25 unconscionable aspect or conduct to avoid any unconscionable result.

(3) Notwithstanding other provisions of this ~~chapter~~ subchapter, a customer shall not be entitled to recover the specific penalties provided in ss. 428.103 (2) (a) and 428.104 (2) (a) if the person violating this ~~chapter~~ subchapter shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid such error.

(4) Any action brought by a customer to enforce rights under sub. (1) shall be commenced within one year after the date of the last violation of this ~~chapter~~ subchapter, 2 years after consummation of the agreement or one year after the last payment, whichever is later. But in no event shall an action be commenced more than 6 years after the date of the last violation.

(5) The administrator specified in s. 426.103, solely through the department of justice, may on behalf of any customer institute an action to enforce this ~~chapter~~ subchapter and to recover the damages and penalties provided for this ~~chapter~~ subchapter. In such action the administrator may obtain an order restraining by temporary or permanent injunctions any violation of this ~~chapter~~ subchapter. This subsection shall not be construed to incorporate or grant to the administrator with respect to the enforcement of this ~~chapter~~ subchapter, any of the provisions of ch. 426.

19 SECTION 9. Subchapter II of chapter 428 [precedes 428.201] of the statutes is created to read:

→ B CHAPTER 428
SUBCHAPTER II

HIGH-COST HOME LOANS

428.201 Definitions. In this subchapter:

B (1) AA "Affiliate" means a person that controls, is controlled by, or is under common control with another person.

(2) "Bona fide loan discount points" means amounts paid by a customer for the purpose of reducing, and which do reduce, the interest rate or time-price differential applicable to a high-cost home loan in an amount and manner that is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

(3) "Customer" means an individual who seeks or acquires a high-cost home loan for personal, family, or household purposes.

(4) "Department" means the department of financial institutions.

(5) (a) Except as provided in par. (c), "High-cost home loan" means a loan which that is made to a customer and which satisfies all of the following conditions

1. The principal amount of the loan does not exceed the lesser of the maximum amount allowable in order to be eligible for purchase by the Federal National Mortgage Association or \$300,000.

2. ☐ The loan is secured by a security interest in a manufactured home, as defined in s. 101.91 (2), which is or will be occupied by the customer as the customer's principal dwelling or is secured by a mortgage or deed of trust on real estate upon which there is or will be located a structure designed principally for occupancy of from one to four families which is or will be occupied by the customer as the customer's principal dwelling.

3. The loan satisfies par. (b).

(b) A loan is a High-cost home loan only if at least one of the following applies to the loan:

1. The annual percentage rate of the loan exceeds the annual percentage rate specified under 15 USC 1602 (aa) (1) (A), as adjusted under 15 USC 1602 (aa) (2).

1 2. Except as otherwise provided in this subdivision, the total points and fees
2 payable by the ~~the~~ customer at or before the loan closing under the loan exceed 5 percent
3 of the total loan amount, ~~if~~ ^{if} the total ~~loan~~ ^{loan} amount is \$20,000 or more, or the lesser
4 of 8 percent of the total loan amount or \$1,000, ~~if~~ ^{if} the total loan amount is less than
5 \$20,000. For purposes of this subdivision, the following amounts shall be excluded
6 from the calculation of the total points and fees payable by the customer, as
7 applicable:

8 a. The total amount of bona fide loan discount points, up to ~~two~~ ², that are
9 payable by the customer in connection with the loan transaction, but only if the
10 interest ~~rate from which~~ ^{rate from which} the loan's interest rate will be discounted does not exceed
11 by ~~more than one~~ ⁽¹⁾ percent the required net yield for a 90-day standard mandatory
12 delivery commitment for a reasonably comparable loan from the Federal National
13 Mortgage Association or the Federal Home Loan Mortgage Corporation,
14 whichever is greater.

15 b. The total amount of bona fide [✓] loan discount point, up to [✓] one, payable by the
16 customer in connection with the loan transaction, but only if [✓] the interest rate from
17 which [✓] the loan's interest rate will be discounted does not exceed by [✓] more than
18 ~~two~~ ² percent the required net yield for a 90-day standard mandatory delivery
19 commitment for a reasonably comparable loan from the Federal National Mortgage
20 Association or the Federal Home Loan Mortgage Corporation, whichever is
21 greater.

22 c. Prepayment fees and penalties which may be charged or collected under
23 the terms of the loan, up to ¹ ~~one~~ percent of the amount prepaid, provided [✓] the loan ^{that}
24 does not permit the lender to charge or collect any prepayment fees or penalties
25 more than 30 months after the loan closing; or

1 3. The customer may be required, under the terms of the loan, to pay
2 prepayment fees or penalties more than 30 months after the date on which the loan
3 is made.

4 4. The customer may be required, under the terms of the loan, to pay
5 prepayment fees or penalties which exceed, in the aggregate, more than ~~two~~ percent
6 of the amount prepaid.

7 (c) "High-cost home loan" does not include an open-end credit plan or a
8 reverse mortgage transaction.

9 (6) "Lender" means a person who regularly ^{makes} ~~engages in~~ ^{or} ~~arranges for~~ ^{high-cost home loans} ~~or procures~~
10 ~~from 3rd persons high-cost home loans~~

11 (7) "Obligor" means a customer, cosigner, or guarantor under a high-cost home
12 loan.

13 (8) (a) Except as provided in par. (b), "Points and fees" means all of the
14 following:

- 15 1. All items included in the definition of "finance charge" under 12 CFR 226.4
- 16 (a).
- 17 2. All items described in 12 CFR 226.4 (b) (1) to (10).
- 18 3. All compensation paid directly by the customer to a mortgage broker.
- 19 4. All prepayment fees and penalties that may be charged or collected under
- 20 the terms of the high-cost home loan.

21 (b) "Points and fees" ^{does} not include any of the following:

- 22 1. Interest and time-price differential.
- 23 2. All items described in 12 CFR 226.4 (c) to (e), except items described in 12
- 24 CFR 226.32 (b) (1) (iii).

1 3. Fees for tax payment services and fees for flood certification, if paid to a
2 person other than the creditor or an affiliate of the creditor.

3 4. Attorney fees, except fees described in 12 CFR 226.4 (a) (ii).
4 (9) "Total loan amount" means the loan principal, less points and fees.

5 **428.202 Prohibitions on and requirements of lenders.** (1) CALL
6 PROVISION. No lender may make a high-cost home loan to a customer that permits
7 the lender or an assignee of the loan to demand payment of the outstanding balance
8 before the original maturity date, except that a covered loan may permit a lender or
9 assignee to so demand as a result of any of the following:

10 (a) The customer's failure to make payments required under the loan.

11 (b) A provision in the loan documents permitting the lender or assignee to make
12 such a demand after the sale of real property that is pledged as security for the loan.

13 (c) Any other provision of the loan documents that is unrelated to the payment
14 schedule.

15 (2) BALLOON PAYMENT. Except as otherwise provided in this subsection, no
16 lender may make a high-cost home loan to a customer that requires, or that permits
17 the lender or an assignee of the loan to require, a payment that is more than twice
18 as large as the average of all earlier scheduled payments. This subsection does not
19 apply to a loan under which the payment schedule is adjusted to account for seasonal
20 or irregular income of the customer.

21 (3) NEGATIVE AMORTIZATION. No lender may make a high-cost home loan to a
22 customer with a payment schedule that causes the principal balance to increase.

23 (4) INCREASED INTEREST RATE. No lender may make a high-cost home loan to a
24 customer that imposes or permits the lender or an assignee of the loan to impose an
25 increase in the interest rate as a result of the customer's default.

1 (B)(5) ADVANCE PAYMENTS. No lender may make a high-cost home loan to a
2 customer that includes a payment schedule that consolidates more than 2 scheduled
3 payments and pays them in advance out of the proceeds of the loan.

4 (B)(6) MODIFICATION OR DEFERRAL FEES. No lender may charge a customer any
5 fees to modify, renew, extend, or amend a high-cost home loan or to defer any
6 payment due under the terms of a high-cost home loan.

7 (B)(7) COUNSELOR APPROVAL. No lender may make a high-cost home loan without
8 first receiving certification from a counselor approved by the department ~~of financial~~
9 ~~institutions~~ that the customer has received counseling on the advisability of the
10 loan.

11 (B)(8) REPAYMENT ABILITY. No lender may make a high-cost home loan unless the
12 lender reasonably believes at the time ^{that} the loan is consummated that an obligor, or
13 multiple obligors collectively, will be able to make the scheduled payments to
14 repay the loan. In making its determination under this subsection, a lender shall
15 consider each obligor's current and expected income, current obligations,
16 employment status, and other financial resources, other than the customer's equity
17 in the dwelling ~~which~~ ^{that} is pledged as security for the loan. An obligor shall be
18 considered to be able to make the scheduled payments to repay the loan under this
19 subsection if, at the time ^{that} the loan is consummated, the obligor's total monthly debts,
20 including amounts that will be owed under the loan, do not exceed 50 percent of the
21 obligor's monthly gross income as verified by the credit application, the obligor's
22 financial statement, a credit report, financial information provided to the lender by
23 or on behalf of the obligor, or any other reasonable means. This subsection does not
24 require a lender to consider an obligor to be unable to make ^{that} the scheduled payments
25 to repay the loan solely because, at the time ^{that} the loan is consummated, the

1 obligor's total monthly debts, including amounts that will be owed under the loan,
2 exceed 50 percent of the obligor's monthly gross income.

3 (9) FINANCING OF FEES OR CHARGES. In making a high-cost home loan, no lender
4 may directly or indirectly finance any of the following:

5 (a) Prepayment fees or penalties payable by the customer, if the loan refinances
6 an existing loan held by the lender or an affiliate of the lender.

7 (b) Points and fees.

8 (c) Any charges payable to persons other than the lender.

9 (10) POINTS AND FEES IN REFINANCING TRANSACTIONS. No lender may charge a
10 customer points and fees in connection with a high-cost home loan if the proceeds
11 of the high-cost home loan are used to refinance an existing high-cost home loan
12 held by the same lender.

13 (11) PAYMENTS TO HOME IMPROVEMENT CONTRACTORS. No lender under a high-cost
14 home loan made to a customer may pay proceeds of the loan to a person who is under
15 contract to complete a remodelling or other home improvement project with regard
16 to an existing building affixed to real estate, unless the payment is made by an
17 instrument that is payable to the customer or jointly to the customer and the person
18 who is under contract or, with the consent of the customer, the payment is made
19 through a 3rd party in accordance with a written agreement that is signed by the
20 customer, the lender, and the person under contract before the payment is made.

21 (12) EVASION. (a) No lender may structure a loan transaction as an open-end
22 credit plan for the purpose of evading the provisions of this section if the loan would
23 have been a high-cost home loan had the loan been structured as a closed-end loan.

24 (b) No lender may divide a loan transaction into separate parts for the purpose
25 of evading the provisions of this section.

1 (c) No lender may engage in any other acts of subterfuge for the purpose of
2 evading the provisions of this section.

3 (13) INSURANCE. No creditor may make a high-cost home loan to a customer
4 that finances premiums for credit life, credit disability, or credit unemployment
5 insurance or any other life or health insurance ~~insurance~~, except if the premium is
6 required to be paid monthly.

7 (14) FLIPPING. No creditor may make a high-cost home loan that refinances an
8 existing high-cost home loan, unless the new high-cost home loan provides a
9 reasonable, tangible net benefit to the customer considering all of the circumstances.

10 (15) RECOMMENDATION OF DEFAULT. No creditor may recommend that a customer
11 default, or encourage a customer to default, on a loan before and in connection with
12 the closing or planned closing of a high-cost home loan.

13 **428.203 Remedies.**

****NOTE: Please let me know what type of remedies you would like to provide
customers. For examples, see subch. III of ch. 425.

14 **428.204 Administration.** The department shall administer this subchapter.
15 The department may promulgate rules for the administration of this subchapter.
16 The rules shall include a method pursuant to which the department certifies
17 counselors for purposes of s. 428.202 (7).✓

****NOTE: Please let me know what additional administrative provisions you
intend to include. For an example, see s. 426.106. Also, please let me know if you'd like
to allow DFI to assess a forfeiture for violations it discovers. that

18 **428.205 Affirmative defenses.** It is a defense to any alleged violation of this
19 subchapter if the person alleged to have committed the violation establishes any of
20 the following:

21 (1) That the person acted in good faith while committing the violation and that,
22 no later than 30 days after consummation of the loan and before any investigation

1 or other enforcement action by the department under this section, the person notified
2 the affected customer of the violation, made appropriate restitution, and made
3 necessary adjustments to the loan so that the loan, at the option of the customer,
4 satisfies the requirements of this subchapter or is changed in a manner beneficial
5 to the customer so that the loan is no longer a high-cost home loan.

6 (b)(2) That the violation was unintentional and resulted from a clerical,
7 calculation, computer malfunction and programming, printing, or any other bona
8 fide error, notwithstanding the maintenance of procedures reasonably adapted
9 to avoid such errors, and that within 60 days after the discovery of the violation
10 and prior to the institution of any action under this subchapter or the receipt of
11 written notice of the violation the lender notified the affected customer of the
12 violation, made appropriate restitution, and made necessary adjustments to the
13 loan so that the loan, at the option of the customer, satisfies the requirements of
14 this subchapter or is changed in a manner beneficial to the customer so that the loan
15 is no longer a high-cost home loan. An error of legal judgment with respect to a
16 person's obligations under this subchapter is not a bona fide error for purposes of this

17 ~~subdivision~~ → subsection

18 SECTION 10. Initial applicability.

19 (1) This act first applies to high-cost home loans under subchapter II of chapter
20 428 of the statutes, as created by this act, made on the effective date of this
21 subsection.
22

(END)

→ as defined in section 428.201 (5) of the statutes,
as created by this act, [initials]

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3277/P1dn

RJM:.....

King

Representative Morris:

that

Attached is the draft you requested concerning predatory lending. It was unclear from the instructions which portions of the North Carolina law you intend to incorporate into Wisconsin law. This draft incorporates the provisions entitled "Restrictions and limitations on high-cost home loans" and "Consumer protections in certain home loans." Please let me know if you intend to incorporate any additional provisions. Also, please note that many provisions in this draft may be preempted by federal law from applying to nationally chartered financial institutions and state financial institutions that are federally insured. If you would like me to investigate the preemption issue further, so that I can provide you with more detailed information, please let me know.

This draft is in preliminary form for your review. Once the draft meets with your approval, I will redraft it into introducible form. Please feel free to call if you have any questions.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: robert.marchant@legis.state.wi.us

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3277/P1dn
RJM:kmg:jf

September 30, 2003

Representative Morris:

Attached is the draft that you requested concerning predatory lending. It was unclear from the instructions which portions of the North Carolina law you intend to incorporate into Wisconsin law. This draft incorporates the provisions entitled "Restrictions and limitations on high-cost home loans" and "Consumer protections in certain home loans." Please let me know if you intend to incorporate any additional provisions. Also, please note that many provisions in this draft may be preempted by federal law from applying to nationally chartered financial institutions and state financial institutions that are federally insured. If you would like me to investigate the preemption issue further, so that I can provide you with more detailed information, please let me know.

This draft is in preliminary form for your review. Once the draft meets with your approval, I will redraft it into introducible form. Please feel free to call if you have any questions.

Robert J. Marchant
Legislative Attorney
Phone: (608) 261-4454
E-mail: robert.marchant@legis.state.wi.us

2/23/04

6-3756

He from ~~the~~ Neci - Rep. Morris

- want to introduce this
- ARG to "fill in" Rob's questions & etc.
will review & let me know if it is
not OK



State of Wisconsin
2003 - 2004 LEGISLATURE

Needed
by 3/9
p.m.

LRB-3277/1

ARG ~~WMA~~ kmg:jf

RMR

~~PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION~~

1 AN ACT *to amend* chapter 428 (title), 428.101 (intro.), 428.101 (3), 428.102
2 (intro.), 428.102 (2), 428.103 (1) (intro.) and 428.106; and *to create* subchapter
3 I (title) of chapter 428 [precedes 428.101] and subchapter II of chapter 428
4 [precedes 428.201] of the statutes; **relating to:** the regulation of certain
5 consumer mortgage loans, granting rule-making authority, and providing a
6 penalty.

Analysis by the Legislative Reference Bureau

~~This is a preliminary draft. An analysis will be provided in a later version.~~

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

7 SECTION 1. Chapter 428 (title) of the statutes is amended to read:

8 CHAPTER 428

9 FIRST LIEN REAL ESTATE AND

10 HIGH-COST HOME LOANS

SECTION 2. Subchapter I (title) of chapter 428 [precedes 428.101] of the statutes is created to read:

CHAPTER 428

SUBCHAPTER I

FIRST LIEN REAL ESTATE LOANS

SECTION 3. 428.101 (intro.) of the statutes is amended to read:

428.101 Applicability. (intro.) This ~~chapter~~ subchapter applies to:

SECTION 4. 428.101 (3) of the statutes is amended to read:

428.101 (3) Loans made on or after November 1, 1981, by a creditor to a customer and which are secured by a first lien real estate mortgage or equivalent security interest if the amount financed is \$25,000 or less and if the loan is not subject to subch. II.

SECTION 5. 428.102 (intro.) of the statutes is amended to read:

428.102 Definitions. (intro.) In this chapter subchapter:

SECTION 6. 428.102 (2) of the statutes is amended to read:

428.102 (2) "Creditor" means a person who regularly engages in, arranges for or procures from 3rd persons, loans within the scope of this chapter subchapter.

SECTION 7. 428.103 (1) (intro.) of the statutes is amended to read:

428.103 (1) (intro.) The following limitations shall apply to all loans subject to this chapter subchapter:

SECTION 8. 428.106 of the statutes is amended to read:

428.106 Remedies. (1) Violations of this chapter subchapter may be enforced by a customer subject to this section and ss. 425.308 to 425.311.

(2) With respect to a loan subject to this ~~chapter~~ subchapter, if the court as a matter of law finds that any aspect of the transaction, any conduct directed against

1 the customer, by the creditor, or any result of the transaction is unconscionable, the
2 court shall, in addition to the remedies and penalties set forth in this ~~chapter~~
3 subchapter, and a penalty not to exceed that specified in s. 428.103 (2), refuse to
4 enforce the unconscionable aspect of the transaction or so limit the application of any
5 unconscionable aspect or conduct to avoid any unconscionable result.

6 (3) Notwithstanding other provisions of this ~~chapter~~ subchapter, a customer
7 shall not be entitled to recover the specific penalties provided in ss. 428.103 (2) (a)
8 and 428.104 (2) (a) if the person violating this ~~chapter~~ subchapter shows by a
9 preponderance of the evidence that the violation was not intentional and resulted
10 from a bona fide error notwithstanding the maintenance of procedures reasonably
11 adapted to avoid such error.

12 (4) Any action brought by a customer to enforce rights under sub. (1) shall be
13 commenced within one year after the date of the last violation of this ~~chapter~~
14 subchapter, 2 years after consummation of the agreement or one year after the last
15 payment, whichever is later. But in no event shall an action be commenced more
16 than 6 years after the date of the last violation.

17 (5) The administrator specified in s. 426.103, solely through the department
18 of justice, may on behalf of any customer institute an action to enforce this ~~chapter~~
19 subchapter and to recover the damages and penalties provided for this ~~chapter~~
20 subchapter. In such action the administrator may obtain an order restraining by
21 temporary or permanent injunctions any violation of this ~~chapter~~ subchapter. This
22 subsection shall not be construed to incorporate or grant to the administrator with
23 respect to the enforcement of this ~~chapter~~ subchapter, any of the provisions of ch. 426.

24 **SECTION 9.** Subchapter II of chapter 428 [precedes 428.201] of the statutes is
25 created to read:

CHAPTER 428

SUBCHAPTER II

HIGH-COST HOME LOANS

428.201 Definitions. In this subchapter:

(1) “Affiliate” means a person that controls, is controlled by, or is under common control with another person.

(2) “Bona fide loan discount points” means amounts paid by a customer for the purpose of reducing, and which do reduce, the interest rate or time-price differential applicable to a high-cost home loan in an amount and manner that is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.

(3) “Customer” means an individual who seeks or acquires a high-cost home loan for personal, family, or household purposes.

(4) “Department” means the department of financial institutions.

(5) (a) Except as provided in par. (c), “high-cost home loan” means a loan that is made to a customer and that satisfies all of the following conditions:

1. The principal amount of the loan does not exceed the lesser of the maximum amount allowable in order to be eligible for purchase by the Federal National Mortgage Association or \$300,000.

2. The loan is secured by a security interest in a manufactured home, as defined in s. 101.91 (2), which is or will be occupied by the customer as the customer's principal dwelling or is secured by a mortgage or deed of trust on real estate upon which there is or will be located a structure designed principally for occupancy of from 1 to 4 families which is or will be occupied by the customer as the customer's principal dwelling.

1 3. The loan satisfies par. (b).

2 (b) A loan is a high-cost home loan only if at least one of the following applies
3 to the loan:

4 1. The annual percentage rate of the loan exceeds the annual percentage rate
5 specified under 15 USC 1602 (aa) (1) (A), as adjusted under 15 USC 1602 (aa) (2).

6 2. Except as otherwise provided in this subdivision, the total points and fees
7 payable by the customer at or before the loan closing under the loan exceed 5 percent
8 of the total loan amount if the total loan amount is \$20,000 or more, or the lesser of
9 8 percent of the total loan amount or \$1,000 if the total loan amount is less than
10 \$20,000. For purposes of this subdivision, the following amounts shall be excluded
11 from the calculation of the total points and fees payable by the customer, as
12 applicable:

13 a. The total amount of bona fide loan discount points, up to 2, that are payable
14 by the customer in connection with the loan transaction, but only if the interest rate
15 from which the loan's interest rate will be discounted does not exceed by more than
16 1 percent the required net yield for a 90-day standard mandatory delivery
17 commitment for a reasonably comparable loan from the Federal National Mortgage
18 Association or the Federal Home Loan Mortgage Corporation, whichever is greater.

19 b. The total amount of bona fide loan discount point, up to one, payable by the
20 customer in connection with the loan transaction, but only if the interest rate from
21 which the loan's interest rate will be discounted does not exceed by more than 2
22 percent the required net yield for a 90-day standard mandatory delivery
23 commitment for a reasonably comparable loan from the Federal National Mortgage
24 Association or the Federal Home Loan Mortgage Corporation, whichever is greater.

1 c. Prepayment fees and penalties which may be charged or collected under the
2 terms of the loan, up to 1 percent of the amount prepaid, provided that the loan does
3 not permit the lender to charge or collect any prepayment fees or penalties more than
4 30 months after the loan closing; or

5 3. The customer may be required, under the terms of the loan, to pay
6 prepayment fees or penalties more than 30 months after the date on which the loan
7 is made.

8 4. The customer may be required, under the terms of the loan, to pay
9 prepayment fees or penalties which exceed, in the aggregate, more than 2 percent
10 of the amount prepaid.

11 (c) “High-cost home loan” does not include an open-end credit plan or a reverse
12 mortgage transaction.

13 (6) “Lender” means a person who regularly makes or arranges high-cost home
14 loans.

15 (7) “Obligor” means a customer, cosigner, or guarantor under a high-cost home
16 loan.

17 (8) (a) Except as provided in par. (b), “points and fees” means all of the
18 following:

19 1. All items included in the definition of “finance charge” under 12 CFR 226.4
20 (a).

21 2. All items described in 12 CFR 226.4 (b) (1) to (10).

22 3. All compensation paid directly by the customer to a mortgage broker.

23 4. All prepayment fees and penalties that may be charged or collected under
24 the terms of the high-cost home loan.

25 (b) “Points and fees” does not include any of the following:

1 1. Interest and time–price differential.

2 2. All items described in 12 CFR 226.4 (c) to (e), except items described in 12
3 CFR 226.32 (b) (1) (iii).

4 3. Fees for tax payment services and fees for flood certification, if paid to a
5 person other than the creditor or an affiliate of the creditor.

6 4. Attorney fees, except fees described in 12 CFR 226.4 (a) (ii).

7 (9) “Total loan amount” means the loan principal, less points and fees.

8 **428.202 Prohibitions on and requirements of lenders. (1) CALL**
9 **PROVISION.** No lender may make a high–cost home loan to a customer that permits
10 the lender or an assignee of the loan to demand payment of the outstanding balance
11 before the original maturity date, except that a covered loan may permit a lender or
12 assignee to so demand as a result of any of the following:

13 (a) The customer’s failure to make payments required under the loan.

14 (b) A provision in the loan documents permitting the lender or assignee to make
15 such a demand after the sale of real property that is pledged as security for the loan.

16 (c) Any other provision of the loan documents that is unrelated to the payment
17 schedule.

18 **(2) BALLOON PAYMENT.** Except as otherwise provided in this subsection, no
19 lender may make a high–cost home loan to a customer that requires, or that permits
20 the lender or an assignee of the loan to require, a payment that is more than twice
21 as large as the average of all earlier scheduled payments. This subsection does not
22 apply to a loan under which the payment schedule is adjusted to account for seasonal
23 or irregular income of the customer.

24 **(3) NEGATIVE AMORTIZATION.** No lender may make a high–cost home loan to a
25 customer with a payment schedule that causes the principal balance to increase.

1 (4) INCREASED INTEREST RATE. No lender may make a high-cost home loan to a
2 customer that imposes or permits the lender or an assignee of the loan to impose an
3 increase in the interest rate as a result of the customer's default.

4 (5) ADVANCE PAYMENTS. No lender may make a high-cost home loan to a
5 customer that includes a payment schedule that consolidates more than 2 scheduled
6 payments and pays them in advance out of the proceeds of the loan.

7 (6) MODIFICATION OR DEFERRAL FEES. No lender may charge a customer any fees
8 to modify, renew, extend, or amend a high-cost home loan or to defer any payment
9 due under the terms of a high-cost home loan.

10 (7) COUNSELOR APPROVAL. No lender may make a high-cost home loan without
11 first receiving certification from a counselor approved by the department that the
12 customer has received counseling on the advisability of the loan.

13 (8) REPAYMENT ABILITY. No lender may make a high-cost home loan unless the
14 lender reasonably believes at the time that the loan is consummated that an obligor,
15 or multiple obligors collectively, will be able to make the scheduled payments to
16 repay the loan. In making its determination under this subsection, a lender shall
17 consider each obligor's current and expected income, current obligations,
18 employment status, and other financial resources, other than the customer's equity
19 in the dwelling that is pledged as security for the loan. An obligor shall be considered
20 to be able to make the scheduled payments to repay the loan under this subsection
21 if, at the time that the loan is consummated, the obligor's total monthly debts,
22 including amounts that will be owed under the loan, do not exceed 50 percent of the
23 obligor's monthly gross income as verified by the credit application, the obligor's
24 financial statement, a credit report, financial information provided to the lender by
25 or on behalf of the obligor, or any other reasonable means. This subsection does not

1 require a lender to consider an obligor to be unable to make the scheduled payments
2 to repay the loan solely because, at the time that the loan is consummated, the
3 obligor's total monthly debts, including amounts that will be owed under the loan,
4 exceed 50 percent of the obligor's monthly gross income.

5 (9) FINANCING OF FEES OR CHARGES. In making a high-cost home loan, no lender
6 may directly or indirectly finance any of the following:

7 (a) Prepayment fees or penalties payable by the customer, if the loan refinances
8 an existing loan held by the lender or an affiliate of the lender.

9 (b) Points and fees.

10 (c) Any charges payable to persons other than the lender.

11 (10) POINTS AND FEES IN REFINANCING TRANSACTIONS. No lender may charge a
12 customer points and fees in connection with a high-cost home loan if the proceeds
13 of the high-cost home loan are used to refinance an existing high-cost home loan
14 held by the same lender.

15 (11) PAYMENTS TO HOME IMPROVEMENT CONTRACTORS. No lender under a
16 high-cost home loan made to a customer may pay proceeds of the loan to a person
17 who is under contract to complete a remodeling or other home improvement project
18 with regard to an existing building affixed to real estate, unless the payment is made
19 by an instrument that is payable to the customer or jointly to the customer and the
20 person who is under contract or, with the consent of the customer, the payment is
21 made through a 3rd party in accordance with a written agreement that is signed by
22 the customer, the lender, and the person under contract before the payment is made.

23 (12) EVASION. (a) No lender may structure a loan transaction as an open-end
24 credit plan for the purpose of evading the provisions of this section if the loan would
25 have been a high-cost home loan had the loan been structured as a closed-end loan.

(b) No lender may divide a loan transaction into separate parts for the purpose of evading the provisions of this section.

(c) No lender may engage in any other acts of subterfuge for the purpose of evading the provisions of this section.

(13) INSURANCE. No ^{lender}~~creditor~~ may make a high-cost home loan to a customer that finances premiums for credit life, credit disability, or credit unemployment insurance or any other life or health insurance, except if the premium is required to be paid monthly.

(14) FLIPPING. No ^{lender}~~creditor~~ may make a high-cost home loan that refinances an existing high-cost home loan, unless the new high-cost home loan provides a reasonable, tangible net benefit to the customer considering all of the circumstances.

(15) RECOMMENDATION OF DEFAULT. No ^{lender}~~creditor~~ may recommend that a customer default, or encourage a customer to default, on a loan before and in connection with the closing or planned closing of a high-cost home loan.

428.203 Remedies.

****NOTE: Please let me know what type of remedies you would like to provide customers. For examples, see subch. III of ch. 428.

428.204 Administration. The department shall administer this subchapter.

The department may promulgate rules for the administration of this subchapter.

The rules shall include a method pursuant to which the department certifies counselors for purposes of s. 428.202 (7).

****NOTE: Please let me know what additional administrative provisions you intend to include. For an example, see s. 426.106. Also, please let me know if you'd like to allow DPI to assess a forfeiture for violations that it discovers.

428.205 Affirmative defenses. It is a defense to any alleged violation of this subchapter if the person alleged to have committed the violation establishes any of the following:

1 (1) That the person acted in good faith while committing the violation and that,
2 no later than 30 days after consummation of the loan and before any investigation
3 or other enforcement action by the department under this section, the person notified
4 the affected customer of the violation, made appropriate restitution, and made
5 necessary adjustments to the loan so that the loan, at the option of the customer,
6 satisfies the requirements of this subchapter or is changed in a manner beneficial to
7 the customer so that the loan is no longer a high-cost home loan.

8 (2) That the violation was unintentional and resulted from a clerical,
9 calculation, computer malfunction and programming, printing, or any other bona
10 fide error, notwithstanding the maintenance of procedures reasonably adopted to
11 avoid such errors, and that within 60 days after the discovery of the violation and
12 prior to the institution of any action under this subchapter or the receipt of written
13 notice of the violation the lender notified the affected customer of the violation, made
14 appropriate restitution, and made necessary adjustments to the loan so that the
15 loan, at the option of the customer, satisfies the requirements of this subchapter or
16 is changed in a manner beneficial to the customer so that the loan is no longer a
17 high-cost home loan. An error of legal judgment with respect to a person's
18 obligations under this subchapter is not a bona fide error for purposes of this
19 subsection.

20 **SECTION 10. Initial applicability.**

21 (1) This act first applies to high-cost home loans, as defined in section 428.201
22 (5) of the statutes, as created by this act, under subchapter II of chapter 428 of the
23 statutes, as created by this act, made on the effective date of this subsection.

24 **(END)**

INSERT ANAL: ✓

This bill creates a subchapter of the statutes regulating "high-cost home loans," as defined in the bill. Significant provisions include the following:

HIGH-COST HOME LOANS

Scope and definitions

This bill creates several prohibitions and requirements applicable to high-cost home loans. The bill generally defines "high-cost home loan" as a loan made by a lender, as defined under the bill, to a customer that has a principal amount not exceeding the lesser of \$300,000 or the maximum amount allowable in order to be eligible for purchase by the Federal National Mortgage Association, that is secured by a mortgage on, or an equivalent security interest in, residential real property, or a manufactured home, occupied or to be occupied by the customer as the customer's principal dwelling, that is not an open-end credit plan or a reverse mortgage transaction, and that satisfies any of the following:

(1) The annual percentage rate at consummation will exceed, by more than eight percent for first-lien loans or by more than ten percent for subordinate-lien loans, the yield on specified U.S. Treasury securities, with these annual percentage rates subject to adjustments reflecting changes made by the Board of Governors of the Federal Reserve System.

(2) If the total loan amount is at least \$20,000, the total points and fees, other than certain excluded points and fees, payable by the customer at or before the loan closing exceed five percent of the total loan amount or, if the total loan amount is less than \$20,000, exceed the lesser of eight percent of the total loan amount or \$1,000.

(3) The customer may, under the terms of the loan, be required to pay prepayment fees or penalties more than 30 months after the date on which the loan is made or that exceed, in the aggregate, more than two percent of the amount prepaid.

The bill defines "lender" as a person who regularly makes or arranges high-cost home loans.

Prohibitions and requirements on creditors

The bill imposes all of the following prohibitions and requirements:

(1) With certain exceptions, no lender may make a high-cost home loan that permits the lender or an assignee of the loan to demand payment of the outstanding balance before the original maturity date.

(2) With certain exceptions, no lender may make a high-cost home loan that requires, or that permits the lender to require, a payment that is more than twice as large as the average of all earlier scheduled payments.

(3) With certain exceptions, no lender may make a high-cost home loan with a payment schedule that causes the principal balance to increase.

(4) No lender may make a high-cost home loan that imposes or permits the lender or an assignee of the loan to impose an increase in the interest rate as a result of the customer's default.

(5) No lender may make a high-cost home loan that includes a payment schedule that consolidates more than two scheduled payments and pays them in advance out of the proceeds of the loan.

(6) No lender may charge a customer any fees to modify, renew, extend, or amend a high-cost home loan or to defer any payment due under the terms of a high-cost home loan.

(7) No lender may make a high-cost home loan without first receiving certification from a counselor approved by the Department of Financial Institutions (DFI) that the customer has received counseling on the advisability of the loan.

(8) No lender may make a high-cost home loan unless the lender reasonably believes at the time that the loan is consummated that the customer, co~~s~~ignor, or guarantor under the loan will be able to make the scheduled payments to repay the loan. In making its determination, the lender must consider current or expected income, current obligations, employment status, and other financial resources, not including the customer's equity in the dwelling pledged as security for the loan. The lender's duty is presumed to be fulfilled if the customer's total monthly debts do not exceed 50 percent of the customer's monthly gross income.

(9) No lender may make a high-cost home loan that finances points and fees or any charges payable to persons other than the lender or, if the loan refinances an existing loan held by the lender, that finances prepayment fees or penalties payable by the customer.

(10) No lender may charge a customer points and fees in connection with a high-cost home loan if the proceeds of the high-cost home loan are used to refinance an existing high-cost home loan held by the same lender.

(11) No lender may pay proceeds of a high-cost home loan to a person who is under contract to make home improvements, as specified in the bill, unless the payment is made by an instrument that is payable to the customer or jointly to the customer and the person who is under contract or, with the consent of the customer, the payment is made through a third party in accordance with a written agreement signed by the customer, the lender, and the person under contract.

(12) No lender may, for the purpose of evading the provisions of the bill: structure a loan transaction as an open-end credit plan if the loan would have been a high-cost home loan had the loan been structured as a closed-end loan; divide a loan transaction into separate parts; or engage in any other acts of subterfuge.

(13) No lender may make a high-cost home loan to a customer that finances premiums for credit life, credit disability, or credit unemployment insurance or any other life or health insurance, except if the premium is required to be paid monthly.

(14) No lender may make a high-cost home loan to a customer that refinances an existing high-cost home loan, unless the new high-cost home loan provides a reasonable, tangible net benefit to the customer considering the circumstances.

(15) No lender may recommend that a customer default, or encourage a customer to default, on a loan before and in connection with the closing or planned closing of a high-cost home loan.

Remedies

The bill permits a customer, or a cosigner or guarantor under a high-cost home loan, to bring an action to enforce any requirement or prohibition under the subchapter created in the bill regulating high-cost home loans. The bill also specifies that the subchapter may be enforced by class action. An action must be commenced during the term of the high-cost home loan or within six years after the cause of action accrues, whichever is later. The bill further specifies that the remedies section must be liberally construed to the end that any aggrieved party is put in at least as good a position as if the person committing the violation had fully complied with this subchapter.

Under the bill, any act that violates the subchapter confers no rights or obligations enforceable by action. In addition, with certain exceptions, a person who violates the subchapter created in the bill is liable to the customer, cosigner, or guarantor in an amount equal to the total of the following:

- (1) Twice the amount of interest paid under the applicable high-cost home loan, plus an amount equal to the total of all interest remaining under the loan.
- (2) The actual damages, including any incidental and consequential damages, sustained by the aggrieved party as a result of the violation.

Furthermore, if an aggrieved party prevails in such an action, he or she must recover the aggregate amount of costs and expenses determined by the court to have been reasonably incurred in connection with the prosecution of the action, together with a reasonable amount for attorney fees.

Administration and criminal penalty

The bill permits DFI to promulgate rules to administer the subchapter created in the bill. In addition, the bill requires DFI, upon the request of any person, to review any act, practice, procedure, or form that has been submitted to it in writing to determine whether the act, practice, procedure, or form is consistent with this subchapter. The bill permits DFI to perform investigations and to bring administrative enforcement proceedings to enforce the subchapter created in the bill. The bill also permits the Department of Justice to bring an action to enforce the subchapter.

Affirmative defenses

The bill also provides that a lender is not liable in any action if any of the following ~~apply~~^{apply}:

- (1) Within 30 days after making the applicable high-cost home loan and before receiving any notice from the customer of the violation on which the action is based, the lender makes appropriate restitution to the customer and appropriate adjustments to the loan.
- (2) The violation on which the action is based was unintentional and took place notwithstanding reasonable procedures adopted by the lender to avoid the violations and, within 60 days after making the applicable high-cost home loan and before receiving any notice from the customer of the violation, the lender makes appropriate restitution to the customer and appropriate adjustments to the loan.

For further information see the **state** fiscal estimate, which will be printed as an appendix to this bill.

BILL

1 security interest in these household goods is prohibited under 12 CFR 227.13 (d), 12
2 CFR 535.2 (a) (4), or 16 CFR 444.2 (a) (4).

3 (4) EXEMPT MARITAL PROPERTY. With respect to process against marital property
4 in satisfaction of a judgment for an obligation described under s. 766.55 (2) (b) arising
5 from a high cost mortgage loan, each spouse is entitled to and may claim the
6 exemptions under sub. (3).

7 ~~428.207 Remedies~~ (1) CAUSE OF ACTION. Except as provided in sub. (5), ~~an obligor~~
8 ~~customer, or a designer or guarantor~~ ^{home} under a high cost mortgage loan, may bring an
9 action to enforce any requirement or prohibition under this subchapter. Except as
10 provided in sub. (5), any requirement or prohibition under this subchapter is
11 enforceable by class action under s. 803.08. cjs

12 (2) REMEDIES. (a) Except as provided under sub. (5) and s. 428.205 ~~in~~, a person
13 who violates this subchapter is liable to the person who commences an action under
14 sub. (1) in an amount equal to the total of the following:

15 1. Twice the amount of interest paid under the applicable high ^{- cost} interest
16 ^{home} mortgage loan, plus an amount equal to the total of all interest remaining under the
17 loan.

18 2. The actual damages, including any incidental and consequential damages,
19 sustained by the person commencing the action as a result of the violation.

20 (b) If a person prevails in an action under sub. (1), the person shall recover the
21 aggregate amount of costs and expenses determined by the court to have been
22 reasonably incurred on the person's behalf in connection with the prosecution of the
23 action, together with a reasonable amount for attorney fees. The award of attorney
24 fees shall be in an amount sufficient to compensate the attorneys representing the

BILL

1 person. In determining the amount of the award, the court may consider any of the
2 following:

- 3 1. The time and labor required, the novelty and difficulty of the questions
4 involved, and the skill requisite properly to conduct the cause.
5 2. The customary charges of the bar for similar services.
6 3. The amount involved in the controversy and the benefits resulting to the
7 client or clients from the services.
8 4. The contingency or the certainty of the compensation.
9 5. The amount of the costs and expenses reasonably advanced by the attorney
10 in the prosecution of the action.

11 (c) Except as provided in s. 428.205 ~~///~~, in addition to the remedies provided
12 under pars. (a) and (b), the following remedies are available in any action under sub.
13 (1):

- 14 1. Injunctive relief.
15 2. Declaratory relief.
16 3. Punitive damages under s. 895.85.

17 (3) UNENFORCEABLE PROVISIONS, ETC. Any act that violates this subchapter
18 confers no rights or obligations enforceable by action.

19 (4) STATUTE OF LIMITATIONS. ~~Except as provided under s. 428.205~~ ~~an action~~
20 under sub. (1) shall be commenced at any time during the term of the high cost
21 ^{home} mortgage loan or within 6 years after the cause of action accrues, whichever is later.

22 ~~(5) AFFIRMATIVE DEFENSE. A creditor is not liable in an action under sub. (1) if~~
23 any of the following apply:

24 (a) Within 30 days after making the applicable high cost ^{home} mortgage loan and
25 before receiving any notice from the ^{obligor} ~~customer~~ of the violation on which the action

BILL

1 under sub. (1) is based, the ~~creditor~~^{tender} makes appropriate restitution to the ~~customer~~^{obligor}
2 and appropriate adjustments to the loan.

3 (b) The violation on which the action under sub. (1) is based was unintentional
4 and took place notwithstanding reasonable procedures adopted by the ~~creditor~~^{tender} to
5 avoid the violations and, within 60 days after making the applicable high cost
6 ~~home mortgage~~^{home} loan and before receiving any notice from the ~~customer~~^{obligor} of the violation, the
7 ~~creditor~~^{tender} makes appropriate restitution to the ~~customer~~^{obligor} and appropriate adjustments
8 to the loan.

9 (6) RULE OF CONSTRUCTION. This section shall be liberally construed to the end
10 that any aggrieved party is put in at least as good a position as if the person
11 committing the violation had fully complied with this subchapter. The remedies
12 provided under this section are in addition to any other remedies provided by law.

13 **428.209 Administration and civil penalty.** (1) RULES. The department may
14 promulgate rules for the administration of this subchapter. The department shall
15 promulgate a rule pursuant to which the department approves counselors for
16 purposes of the notice under s. 428.204 (2).

17 (2) REVIEW OF ACT, PRACTICE, PROCEDURE, OR FORM. Upon the request of any
18 person, the department shall review any act, practice, procedure, or form that has
19 been submitted to the department in writing to determine whether the act, practice,
20 procedure, or form is consistent with this subchapter.

21 (3) INVESTIGATIONS. (a) At any time that the department has reason to believe
22 that a person has engaged in or is about to engage in an act that violates this
23 subchapter, the department may investigate. In performing an investigation under
24 this paragraph, the department may administer oaths or affirmations, subpoena
25 witnesses, compel their attendance, adduce evidence, and require the production of

BILL

1 any matter, including the existence, description, nature, custody, condition, and
2 location of any books, documents, or other tangible things, and the identity and
3 location of persons having knowledge of relevant facts, or any other matter
4 reasonably calculated to lead to the discovery of admissible evidence. The
5 department may access and examine such books, documents, or other tangible
6 things. In any civil action brought on behalf of the department based on evidence
7 obtained in such an investigation, the department may recover the costs of
8 performing the investigation if the department prevails in the action.

9 (b) If 5 or more persons file a verified complaint with the department alleging
10 that a person has violated this subchapter, the department shall immediately
11 commence an investigation pursuant to par. (a).

12 (c) If the records of a person who is subject to an investigation pursuant to par.
13 (a) are located outside of this state, the person at the person's option shall either
14 make them available to the department at a convenient location within this state or
15 pay the reasonable and necessary expenses for the department to examine them at
16 the place where they are located. The department may designate representatives,
17 including comparable officials of the state in which the records are located, to inspect
18 them on the department's behalf.

19 (d) At the request of the department and upon reasonable notice to all affected
20 persons, the department of justice may apply to any court of record for an order
21 compelling compliance if a person fails to obey a subpoena or to give testimony
22 pursuant to par. (a).

23 (4) ENFORCEMENT AND CIVIL PENALTY. (a) The department may serve a notice
24 of a hearing that complies with s. 227.44 (1) and (2) on a person if the department
25 reasonably suspects that the person has violated this subchapter. The department

Insert
10-19
Cont'd

BILL

1 may receive complaints alleging violations of this subchapter. A hearing conducted
2 pursuant to a notice under this paragraph shall be conducted in the manner specified
3 for a contested case, as defined in s. 227.01 (3), under ss. 227.44 to 227.50. If the
4 person fails to appear at the hearing or if upon the record made at the hearing the
5 department finds that a violation has been established, the department may issue
6 and serve on the person an order to cease and desist from the violation or practice.
7 *Subject to s. 428.205,*
8 ~~The~~ order may require the person to correct the conditions resulting from the
9 violation or practice and to forfeit not more than \$5,000 per violation. The order is
effective upon service on the person and may be appealed under s. 220.035.

10 (b) ~~The~~ department of justice may bring an action to enforce this subchapter
11 and, in any such action, any person who is found to have violated this subchapter may
12 be required to forfeit not more than \$5,000 per violation. The department of justice,
13 at the request of the department, may bring an action to enforce an order issued
14 under par. (a).

15 ~~428.210 Criminal penalty.~~ Any person who knowingly violates this
16 subchapter may be fined not more than \$5,000.

17 SECTION 17. 788.01 of the statutes is amended to read:

18 **788.01 Arbitration clauses in contracts enforceable.** ~~-A- Except as~~
19 ~~provided in s. 428.203 (12), a provision in any written contract to settle by arbitration~~
20 ~~a controversy thereafter arising out of the contract, or out of the refusal to perform~~
21 ~~the whole or any part of the contract, or an agreement in writing between 2 or more~~
22 ~~persons to submit to arbitration any controversy existing between them at the time~~
23 ~~of the agreement to submit, shall be valid, irrevocable and enforceable except upon~~
24 ~~such grounds as exist at law or in equity for the revocation of any contract. This~~
25 ~~chapter shall not apply to contracts between employers and employees, or between~~

Emery, Lynn

From: Riley, Neci
Sent: Wednesday, March 10, 2004 11:44 AM
To: LRB.Legal
Subject: Draft review: LRB 03-3277/1 Topic: Predatory lending

It has been requested by <Riley, Neci> that the following draft be jacketed for the ASSEMBLY:

Draft review: LRB 03-3277/1 Topic: Predatory lending